

between said upper and lower walls, as said expansion member moves posteriorly along said post during installation; said expansion member being sized and shaped to remain in contact with said upper and lower walls in close proximity to anterior ends of said upper and lower walls, so as to provide support to said anterior ends during usage.

REMARKS:

The Office action mailed July 25, 2002 has been received and carefully considered. Reconsideration of the application as a continuing application and as amended hereby is respectfully requested.

Kindly enter the present amendment prior to first action in the continuing application for patent.

Previously, Claims 31 and 32 were rejected as anticipated by Biderman. It is believed that Biderman is being misinterpreted. While the upper and lower walls of Biderman move outwardly, the design is such that they move outwardly parallel to each other. Such movement is mandated by the mechanism involved and can be seen in the changes between Fig. 7 (before expansion) and Fig. 8 (after expansion and with the top and bottom walls parallel).

In applicant's device the upper and lower walls move in such a way that the anterior spacing changes and so that the walls move into a predetermined angle relative to each other. This difference has been emphasized by the addition of "non parallel" to Claim 31, although it is believed that the word angle already indicates such a structure. Therefore, it is urged that Biderman does not anticipate the structure called for in Claims 31 and 32.

It is also noted that applicant reserves the right to "swear back" of Biderman, if that reference is used in a later rejection.

Claims 33 to 36 were rejected as anticipated by Koros. The wedge shaped nut element 470 is being interpreted in the Office action as an end cap as called for in the claims. This interpretation is considered incorrect. The element 470 of Koros does not have upper and lower support surfaces, but only a sharp round edge. Further, the element 470 of Koros is designed to wedge the upper walls of the device apart and is not designed to engage the vertebrae nor would it be effective in supporting the vertebrae as it has no support surfaces sized and shaped to do so. In the location shown for element 470 and in view of its size, it would not even engage, let alone support, the vertebrae. Therefore, it is not seen that Koros anticipates Claims 33 to 36. Applicant reserves the right to "swear behind" Koros, if subsequent rejections incorporate it.

Claims 37 to 39 were rejected as anticipated by Nolan. This rejection is believed to be based on a misinterpretation of Nolan. Nothing in Figures 12, 13 or 17 indicate that the disc 14' has "flat surfaces" or that it is anything but round. Reference is made to Column 5, lines 22 to 25 wherein the disc 14' is described as including two circular portions 62 and 64 and a tapered threaded portion 66. Such a structure of this type is clearly shown in Fig. 16 from the front where the disc 14 is round and does not engage or support the bone, but only spreads the cage. Fig. 17 shows the disc 14' in the same position as the disc 14 in Fig. 16 and, while bone is located on either side of the discs 14 and 14', the bone is not touching or supported by the discs. Consequently, it is urged that Claims 37 to 39 are not anticipated by Nolan.

Applicant reserves the right to "swear back" of Nolan, if it is used in a subsequent rejection.

Claims 40 to 41 were rejected as anticipated by Lahille. The Lahille device includes a spreader roller 37 that moves posteriorly as the shank 36 is rotated. This means that, as the roller moves posteriorly, the top and bottom walls extend forward of the roller 37 without direct support. This produces unsupported lever arms in the top and bottom walls that are subject to substantial forces and which can cause them to break. Applicant's device includes an expansion member that is shaped to

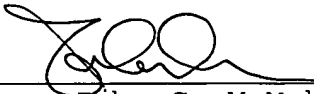
remain in contact with the walls in close proximity to the anterior ends thereof as expansion occurs, so as to provide support to the anterior ends during use and reduce the likelihood of failure (for example, see Figs. 9, 11 and 13 where the members support anterior ends of the walls even after expansion). Claim 40 has been amended to better describe this feature of applicant's invention. This concept is clearly not shown in Lahille (for example, see Fig. 15 where the walls extend forward for a substantial length without support). Therefore, it is urged that Lahille does not now anticipate Claims 40 and 41.

In summary, it is urged that Claims 31 to 41 distinguish over the art of record and notice to that effect is earnestly requested.

The Examiner is invited to contact the undersigned by telephone, if prosecution of this application can be expedited thereby.

Respectfully Submitted,

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correspondence is being deposited  
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Washington, D.C. 20231 on  
December 23, 2002.

Roger P. Jackson  
(Applicant)

By

  
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December 23, 2002

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(Date of Signature)